

4410-15

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On January 10, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Chrysler-Dodge-Jeep “Ecodiesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:17-md-2777 EMC (JSC), resolving civil Clean Air Act claims and various California claims (including under the California Health and Safety Code) against Fiat Chrysler Automobiles, N.V., FCA US, LLC and others (“Fiat Chrysler”), concerning noncompliant 3.0 liter “EcoDiesel” vehicles (“Subject Vehicles”). In addition, on the same date, the private Plaintiffs’ Steering Committee filed a proposed Consumer Class Action Settlement Agreement and Release (“Class Action Settlement”) with Fiat Chrysler with respect to the same EcoDiesel vehicles, and Customs and Border Protection entered into an administrative Settlement Agreement with Fiat Chrysler based on allegations of illegal importation of a portion of these noncompliant diesel vehicles (“CBP Agreement”). In addition to its joint settlement with the United States, on the same day, California entered into two additional settlements with the defendants concerning the Subject Vehicles. The First California Partial Consent Decree resolves California’s claim for mitigation (and is discussed further below), and the Second California Partial Consent Decree resolves defendants’ alleged violation of California consumer protection laws related to the Subject Vehicles. These five settlements resolve separate claims but offer coordinated relief.

On May 23, 2017, the United States, on behalf of the Environmental Protection Agency (“EPA”) filed a complaint against Fiat Chrysler Automobiles, N.V., FCA US LLC, V.M. Motori S.p.A., and V.M. North America, Inc. alleging that the defendants violated Sections 203(a)(1),

(2), (3)(A), and (3)(B) of the Clean Air Act – 42 U.S.C. §§ 7522(a)(1), (2), (3)(A), and (3)(B) – with regard to approximately 104,000 model year 2014 to 2016 Jeep Cherokee and Ram 1500 vehicles containing 3.0 liter EcoDiesel engines. The United States’ complaint alleges, among other things, that each Subject Vehicle contains computer software functions that are undisclosed Auxiliary Emission Control Devices (“AECs”) and prohibited defeat devices that cause the emissions control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. The complaint alleges that the defeat devices cause the vehicles, during normal vehicle operation and use, to emit excess oxides of nitrogen (“NOx”). The complaint seeks, among other things, injunctive relief to remedy the violations, including mitigation of excess NOx emissions, and civil penalties.

On January 9, 2019, the People of the State of California, by and through the California Air Resources Board, and Xavier Becerra, Attorney General of the State of California (collectively, “California”), filed a complaint against the defendants alleging that, in connection with the certification, marketing, distribution, and sale of approximately 14,000 Subject Vehicles in California, the defendants violated Section 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1); California Health and Safety Code §§ 43016, 43017, 43151, 43152, 43153, 43154, 43205, 43211, and 43212; 13 C.C.R. §§ 1961, 1961.2, 1965, 1968.2, and 2037, and the 40 C.F.R. sections incorporated therein by reference; and California Business and Professions Code §§ 17200 et seq., 17500 et seq., and 17580.5. California’s complaint alleges that each Subject Vehicle contains, as part of the electronic control module, certain software functions and calibrations that cause the emission control system of those vehicles to perform differently during normal vehicle operation and use than during emissions testing. California’s complaint alleges that these software functions and calibrations are undisclosed AECs in violation of

California and federal law, and that they are also prohibited defeat devices. California's complaint alleges that the defeat devices and undisclosed AECDs cause the Subject Vehicles to emit NO<sub>x</sub> in excess of CARB-compliant levels. California's complaint also alleges that defendants' actions violated California consumer protection laws. California's complaint seeks, among other things, civil penalties, injunctive relief to remedy the violations (including mitigation of excess NO<sub>x</sub> emissions), costs, and other equitable relief.

The lodged Consent Decree is entered into between the United States, California, and the defendants (Fiat Chrysler Automobiles, N.V., FCA US LLC, V.M. Motori S.p.A., and V.M. North America, Inc.). The Decree provides a remedy for the vehicles on the road by requiring Fiat Chrysler to offer all Eligible Owners and Lessees of Eligible Vehicles (all as defined in the Decree) the Approved Emissions Modification and applicable warranties (as defined and described in the Decree). Fiat Chrysler must install the Approved Emissions Modification on at least 85% of the Subject Vehicles (as further described in the Decree) by no later than two years after the Decree is entered by the Court. If it fails to do so, Fiat Chrysler must make a payment to the United States of \$5.5 million for each 1% that Fiat Chrysler falls short of the 85% rate. Fiat Chrysler must also achieve a separate 85% recall rate for vehicles in California, and must pay \$825,000 to California for each 1% that it falls short of this target. See Decree Paragraph 41. For each Subject Vehicle that receives the Approved Emissions Modification, Fiat Chrysler must provide Eligible Owners and Lessees with an Extended Warranty. See Decree Paragraph 45. The Extended Warranty covers all components, parts, and associated labor described in Appendix E of the Decree. Fiat Chrysler must mail notice of the recall to all known Eligible Owners and Eligible Lessees. Fiat Chrysler may provide this notice through a Court-approved

Class Action Settlement Notice or through an alternative means approved by the United States and California. See Decree Paragraph 43.

There is no end date for the emissions modification recall. Fiat Chrysler must offer the Approved Emissions Modification to Eligible Owners and Eligible Lessees for eighteen years after the Court enters the Decree (the “Effective Date”); following the eighteenth anniversary of the Effective Date, Fiat Chrysler must make reasonable efforts to ensure that the Approved Emissions Modification remains available. See Decree Paragraph 39.

In addition, the Decree requires Fiat Chrysler to perform a mitigation program, which is estimated to mitigate the lifetime excess tons of NO<sub>x</sub> caused by Defendants’ violations in all 50 states, except California, by implementing a program to improve the efficiency of 200,000 aftermarket catalytic converters that will be installed on light-duty gasoline motor vehicles nationwide (except in California, New York, and Maine, which already require the use of high-efficiency aftermarket catalytic converters). See Decree Section VI.D (Mitigation Program). Fiat Chrysler has entered into a separate agreement with California, which is estimated to mitigate the lifetime excess NO<sub>x</sub> emissions from the Subject Vehicles in California – this program is set forth in a separate proposed consent decree between California and Fiat Chrysler.

Fiat Chrysler must also implement updated and improved corporate compliance and governance programs. See Decree Section VI.C (Corporate Compliance Requirements).

Finally, Fiat Chrysler must pay a civil penalty of \$305 million to the United States and the State of California.

The publication of this notice opens a period for public comment on the Consent Decree. Comments on the Consent Decree (but not concerning the CBP Agreement, Class Action Settlement or California-only settlements) should be addressed to the Assistant Attorney

General, Environment and Natural Resources Division, and should refer to *In re: Chrysler-Dodge-Jeep “Ecodiesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:17-md-2777 EMC (JSC), D.J. Ref. No. 90-5-2-1-11607.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611

For the entire Consent Decree and its appendices, please enclose a check or money order for \$56.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy of certain portions of the Consent Decree, please designate which portions are requested, and provide the appropriate amount of money. For the Consent Decree without the exhibits and signature pages, the cost is \$36.25. For Appendix A (Adjustment Factors), the cost is \$0.50. For Appendix B (CVN and CALID for the Final Carryback Configuration), the cost is \$0.75. For

Appendix C (documents related to the MY 2014 Field Fix), the cost is \$11.50. For Appendix D (Approved Emissions Modification Disclosure), the cost is \$0.50. For Appendix E (Extended Warranty description), the cost is \$0.75. For Appendix F, the cost is \$4.00 (list of Defendants affiliates, parents, and subsidiaries for purposes of the Effect of Settlement and Reservations of Rights).

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[FR Doc. 2019-00662 Filed: 1/31/2019 8:45 am; Publication Date: 2/1/2019]